



Consumer Federation of America

Testimony of

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on behalf of

Consumer Federation of America
Free Press
Consumers Union

before the

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Committee on Energy and Commerce

Regarding

Universal Service

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

My name is Mark Cooper. I am Director of Research of the Consumer Federation of America. I appear to on behalf of the Consumer Federation of America, Consumers Union and Free Press.

The Consumer Federation of America,¹ Consumers Union,² and Free Press³ appreciate the opportunity to testify on the issue of universal service. As consumer advocates, we strongly support the Universal Service programs that have delivered essential communications services to low-income households, rural areas, schools, libraries, and rural health clinics. We recognize the fiscal crisis of falling receipts and expanding expenses in the program demands reform. Yet we view the current predicament as both a threat and an opportunity. We believe that as communications technologies evolve, universal service must evolve with it. We support the expansion of the Universal Service Fund (USF) support to broadband as the organizing principle to overhaul its contribution and distribution systems.

As Congress looks to resolve the thorny problems of reforming the Universal Service system, we urge Members to start with the principles that lie at the base of the Communications Act. The purpose of the Act was to regulate communications networks “so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and world-wide wire and radio communications service with adequate facilities at reasonable charges.”⁴

The goal of the Communications Act of 1934, as amended by the Telecommunications Act 1996 is “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid efficient, nationwide and world-wide wire and radio communications service with adequate facilities at reasonable charges.

The Act goes on in Section 254 to specify this Universal Service Principles as follows:

- Quality services should be available at just, reasonable an affordable rates.
- Access to advanced telecommunications and information services should be provided in all regions of the country.
- Consumers in all regions of the nation, including low income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange and advanced telecommunications and information services that are reasonably comparable to those services in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Reasonably comparable services available at reasonably comparable rates for all Americans are the right goals. Broadband facilities are the facilities that must be the goal of universal service in the 21st century. By that standard, the 1996 Act has failed miserably. Moreover, if enacted into law, the COPE Act, which was recently passed by the House of Representative would make matters worse.

Instead of reaffirming that commitment to universal service, the COPE Act turned its back on low-income consumers, and consumers in rural and high cost areas by excusing network operators from their obligation to provide universal service and allowing them to redline high cost areas. By allowing network operators to discriminate against applications, service and content providers, it opens the door to anti-competitive bundling that raises the threshold of prices far beyond the affordable level for low income Americans. Earlier this week AT&T announced a brutally anti-competitive, anti-consumer price for stand alone DSL, which it agreed to offer as a merger condition. AT&T charges \$29.85 for DSL and required customers to have local service for about \$16 per month. The mandatory bundled cost is \$46 per month. Forced to break the bundle, AT&T announced that it will charge \$44.95 for stand alone DSL service. Giving network operators the freedom to exercise their market power will increase the threshold costs for gaining access to the broadband network.

This principle—strongly reaffirmed in 1996—is the simple, powerful, and fundamentally progressive commitment to universal, affordable access to communications services for all Americans. It is this policy that has brought telecommunications to schools, libraries, rural health facilities, low-income households, and rural areas at reasonable rates and adequate quality of service. The vital importance of this program is clear to anyone who has ever lived rural America or struggled to make ends meet. The economic case for affordable access is clear, and research produced by consumer groups has been documenting it for many years.⁵

The public policy commitment to ubiquitous communications has never been more important than now. Standing at the threshold of an information technology revolution, we cannot and should not abandon or weaken our guarantee of universal, affordable access. Granted, the communications marketplace has changed substantially since 1996—the last time USF was comprehensively addressed. The needs of our society and economy have evolved, and USF must evolve with them. The labyrinthine complexity of USF distribution—with both its successes and shortcomings—must not be allowed to blind us from the bottom line: Broadband is now, undeniably, the essential communications medium of the 21st Century. Broadband networks are the “adequate facilities” that we must provide to all Americans at “reasonable charges.”

Yet, as in past technological paradigms shifts, rural communities and low-income groups have been left behind. The economic costs of this digital divide are severe—curtailing the educational, economic, and social opportunities for a significant sector of our society. It is no secret to this Committee that the United States lags badly behind other nations in broadband penetration. The longer we wait for universal deployment of broadband to every region of the country, the further behind our global competitors we will fall. Not only should we apply USF to broadband, we can’t afford not to. This is the only way to get back on track toward the President’s stated goal of universal affordable broadband by 2007.

The current financial crisis in the USF programs and the difficulty in ensuring USF support delivers a strong return on investment have been readily identified as threats to a successful policy. But needed reform is equally an opportunity. We should look to reform USF both to address its long term stability and to use it to bridge the broadband digital divide. The cornerstone of this policy historically, and now, must be a commitment to bringing affordable service to average citizens. At the time of the Communications Act of 1934, telephone penetration rates were around 40%—very similar to where we currently stand with broadband.⁶ The vision that inspired a policy

that brought that telephone penetration rate above 90% must now be applied to high-speed Internet access.

The USF system does have a checkered track record and some serious problems. There is virtual consensus that we need reform. The program faces a financial crisis at present because of declining receipts and expanding outlays. If broadband becomes an explicit part of USF, these issues must be immediately addressed. To do this, there will be a significant number of tough questions this committee will face in an effort to overhaul the system of contributions and distributions. But this is no time to turn from the principles that have proven so successful. Nor is it time to lose sight of the real problems that USF is meant to solve—our communications inequalities.

DIAGNOSING THE US BROADBAND PROBLEM

The crisis in USF is severe, but the crisis it is intended to address is arguably much worse, and certainly portends more dire consequences to the health of the US economy. As this Committee has heard ad nauseum in hearing after hearing this year, the US has fallen out of the top 15 nations in broadband penetration. It bears repeating here because this testimony will bring new data to the question. This new research directly ties our global broadband rank to the issue of Universal Service.

Defenders of current broadband policy have argued that America's low global ranking is misleading because our population density is so low compared to smaller nations such as Japan, South Korea, and Sweden.⁷ Noting that Canada outperforms us in broadband penetration despite its size and population density, we investigated this question. We analyzed the data from the OECD study of broadband in 30 nations and specifically controlled for population density. The results are striking. [See Appendix.] Population density turns out to have very little impact on our relative broadband performance compared to other nations. Far more important are median household income, the poverty rate, and exposure to Internet technologies inside and outside the home.

Rural areas are indeed underserved—broadband penetration rates in urban areas are nearly double those of rural areas. Yet, our research indicates that geography is a factor in depressed broadband penetration because of two higher order causes that are characteristic of rural areas—the price of service and the low income levels of potential subscribers. It costs more (per customer served) to build rural infrastructure, which limits competition and raises prices, and the disposable income of the average rural family is lower than average. Additionally, rural areas tend to have a disproportionate number of retired Americans on fixed incomes. These factors result in depressed broadband penetration. These conclusions comport with the findings of a study by the Pew Internet and American Life Project.⁸ Our research also confirms a recent survey showing that over 45% of broadband *non-subscribers* in the US do not subscribe because of high prices. A further 10% report that service is unavailable.⁹ The combination of high prices and poor people results in lower technology exposure and adoption in rural America.

On the question of exposure to the Internet, another key factor in promoting broadband penetration, Pew found that 32% of the adult population does not use the Internet—a figure that held steady for the first half of 2005.¹⁰ But our problem is not only with adults, it is also children. Of the 30 nations in the OECD study, the US ranked 26th (ahead of only Mexico, Turkey, and Slovakia) in the percentage of 15-year olds that have used a computer. Other nations are winning the broadband race because they are bringing technology and services to low-income areas.

The USF program is specifically designed to address these problems and is uniquely suited to do so if we apply its support to broadband. There are plenty of rural communications providers. The issue is finding the right balance of subsidies to incent investment and to make their products affordable to low-income Americans. Expanding USF support to broadband is a logical step to correcting the negative trends in our broadband markets. First, USF brings service to rural and low-income areas at affordable rates. Perhaps no other single policy is more important to our long term broadband prospects. Second, USF supports discounted Internet access in schools and libraries, which frees resources to buy PCs for the computer labs that connect to these lines. These public institutions serve to expose our young people to technology and catalyze the residential market for home computers and broadband services.

Other nations have used strategic direct investment in broadband infrastructure in low-income and rural areas to outperform us across the board. We should take note and plan accordingly. Policies that stimulate low-income consumer demand will improve the U.S.'s broadband situation. Universal Service policy applied to the broadband market will play a positive role in bridging the economic and rural digital divides. This in turn will significantly improve U.S. broadband performance relative to other leading nations.

General Principles of Implementation for USF Reform

As consumer representatives, we look to USF reform as an opportunity to extend the burden of contributions more equitably *and* to broaden the scope of distributions more effectively. The principles for implementing USF reform in 2006 must carry the same spirit as the principles for implementing USF in 1996. The functions, however, must be more forward looking. USF reform should:

- Explicitly expand USF to broadband and set a level of service and a target price comparable to dominant technology in urban areas. The FCC's broadband definition of 200 kbps is unacceptable and backward-looking. It must be revised to ensure appropriate levels of service.
- Broaden the base of USF contributions, equitably assessed and technology neutral, to stabilize the financial future of the Fund.
- Tighten the reigns of oversight and control that ensure disclosure of how the Fund's distributions are spent, who qualifies to spend them, and what the results of that spending yield. Increased data collection to make these assessments, including determining the capacity of lines in service areas, will be a key component to understanding how and where to make strategic investments in infrastructure.
- Find the right balance for USF subsidy. If the subsidy is too big, investment does not flow to the most efficient provider and rate paying consumers are overly burdened without a commensurate benefit. The inter-industry wrestling over revenue must be exposed to scrutiny and untangled fairly. Consumer contributions to the Fund must produce a tangible social and economic benefit in the form of a more robust network and catalyzed economic growth. We have real success stories with

broadband provision by carriers of all kinds—we should identify those blueprints and duplicate them.

- Invest in a technology neutral manner that promotes the least costly, most efficient systems that meet robust quality of service standards.
- Begin a transitional phase leading to a point when all USF eligible carriers offer broadband compatible networks. The converged IP platform that carries both voice and data is more efficient, more robust, and not substantially more expensive than PSTN upgrades. As the PSTN equipment depreciates and requires replacement, it should be replaced with an IP platform.
- Discipline the size of the fund through rigorous oversight, realistic maximum allocations, forward-looking cost assessments where appropriate, and sliding scales of eligibility and reimbursement. The FCC and state utility commissions should work in tandem to develop new protocols that make sense for a USF that supports 21st Century communications services.
- Reform USF in conjunction with a comprehensive set of broadband policies. These should include:
 - Opening more of the spectrum for unlicensed wireless broadband,
 - Focusing on competition inducing policies that counterbalance mergers,
 - Strategic direct investment in rural broadband infrastructure,
 - Reinstatement of the Technology Opportunities Program at NTIA,
 - Encourage community development programs as broadband partners in order to expand access to low-cost equipment and technology training.

Conclusion

There are no easy solutions to correcting the problems of the Universal Service. But they must be addressed based on the same principles that have always guided progressive communications policy—a commitment to ubiquitous, affordable access to the most important technologies of the era. Broadband unquestionably qualifies as the dominant communications service of the 21st century. The benefits of applying USF to broadband outweigh the costs by a wide margin. Without a strong, comprehensive policy commitment to developing our broadband markets, we cannot hope to correct the problems that have plunged us down the ranks of global competitiveness. We need policies that give the “green light” to investment in communications infrastructure in rural and low-income America with a strong commitment to accountability, efficiency, and oversight. We strongly encourage this Committee to uphold the remarkable and progressive commitment to Universal Service that is the foundation of our communications policy.

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- ¹ The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.
- ² Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.
- ³ Free Press is a national, nonpartisan organization with over 225,000 members working to increase informed public participation in crucial media and communications policy debates.
- ⁴ *Communications Act of 1934*, 47 USC 151.
- ⁵ See for example the work of Mark Cooper: "Disconnected, Disadvantaged, Disenfranchised: Explorations in the Digital Divide," Consumer Federation of America and Consumers Union, October 2000, <http://www.consumersunion.org/pdf/disconnect.pdf>; "Expanding the Digital Divide and Falling Behind on Broadband," Consumer Federation of America and Consumers Union, October 2004, <http://www.consumersunion.org/pub/ddnewbook.pdf>.
- ⁶ Mark Cooper, "Universal Service: A Historical Perspective and Policies for the Twenty-First Century," Consumer Federation of America and the Benton Foundation, 1996.
- ⁷ See for example, FCC Chairman Kevin Martin, "United States of Broadband," *Wall Street Journal*, July 7, 2005.
- ⁸ See Peter Bell, Pavani Reddy, and Lee Rainie, "Rural Areas and the Internet," Pew Internet and American Life Project, February 17, 2004, http://www.pewinternet.org/PPF/r/112/report_display.asp
- ⁹ Yankee Group Research, Inc. February 2006, cited at <http://www.emarketer.com/article.aspx?1003833>
- ¹⁰ See John Horrigan, "Broadband in the United States: Growing but Slowing," Pew Internet and American Life Project, September 21, 2005, http://www.pewinternet.org/PPF/r/164/report_display.asp